REMARKS

In sections 8-24 of the Office Action, the Examiner rejected claims 1-4, 6-9, 18, 19, 21, 26, 28-34, and 40-45 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Ballard.

Independent claim 1 recites the automatic initiation of a request by a content recipient for posted content, the automatic receipt at the content recipient of posted content, and the automatic display to the content recipient of a notice is that the posted content has been received by the content recipient.

Neither Apfel nor Ballard discloses a content recipient that both automatically initiates a request for posted content and automatically receives that posted content. Apfel discloses in Figure 4A a block 409 that requires a manually initiated request for an update and in Figure 4B a block 439 that requires a manually initiated download of the update.

Apfel does disclose at column 11, lines 49-59 that, alternatively, the request may be initiated entirely in the background without a dialog box being displayed to the user. This portion further discloses that an HTTP query may automatically be initiated in the background, and that, if the query fails, there will be

no action and the user will not even know that the query had been initiated. Finally, this portion discloses that, if the query is successful such that a new version is available, the user will be then prompted to apply the update.

In other words, the block 409 in Figure 4A may dispensed with in this alternative, but the block 439 in Figure 4B is retained. Accordingly, although the initiation of the request is automatic, the receipt is still manual.

As to Ballard, the entire search is manual rather than automatic.

Accordingly, because neither Apfel nor Ballard discloses a content recipient that both automatically initiates a request for posted content and automatically receives that posted content as required by independent claim 1, one of ordinary skill in the art would not have combined Apfel and Ballard so as to produce the invention of independent claim 1.

For this reason, independent claim 1 is not unpatentable over Apfel in view of Ballard.

Moreover, applicants pointed out in their response to the first Office Action that Apfel failed to disclose the automatic notice of independent claim 1,

which caused the Examiner to rely on Ballard in addition to Apfel.

Ballard describes a server network 10 having interlinked servers 12a-12e. Each server 12a-12e stores files accessible to others of the servers 12a-12e and to clients 14 and a remote network 16 which links into the server network 10. To search the server network 10, the client 14 accesses a search engine such as one hosted by a server 50. The search engine may be accessed by URL.

At a step 52 of Figure 4, the client 14 accesses the search engine and enters search criteria 72 such as the title of a song, the performing artist, the date or place of the performance, or the song writer. At a step 54, a search of the server network 10 is performed using the search engine, and at a step 56 the search engine returns a list of files 74. The list of files 74, for example, includes a hyperlink to a URL with some brief description of the contents at such location. At step 58, a subset 82 of the files is selected so as to reduce the list of files 74 to a manageable amount of data.

At a step 60, a download of the files in the subset 82 is commenced. A message indicating that a file is not found or is no longer available at the location

which is being prompted may be received. At a step 62, the files in the subset 82 are screened automatically based on predefined fixed or user selected parameters and for downloading bandwidth performance. The files 76 with the highest bandwidth performance are selected at a step 64. At a step 66, the rest of the files 76 are then downloaded.

A popularity measure 78, which counts the number of times a file is downloaded, is maintained at the server 50. The popularity measure 78 corresponds not to the audio song, but to the song/site combination. Other measures, such as the number of times a title has been downloaded, also may be rated. These measures are maintained by sending a message 80 from the client 14 to the server 50 at which the measure is maintained. At a step 68, the measure is updated at the server 50.

At a step 70, the files 76 are presented to the client 14, such as by displaying a message to the user indicating that the download is complete, by displaying the file, by playing the audio work, by displaying a message that the audio work is available to be played.

The Examiner argues that it would have been obvious to provide the message described in connection with step 70 of Ballard in the process described in Apfel

for the purpose of alerting the user that the Apfel update has been downloaded and is available.

However, as pointed out above, even in the case where a request for updates is automatically initiated, the actual download still requires a specific manual instruction from the user. If the user manually instructs the download, then a notice of the download is not necessary. Therefore, one of ordinary skill in the art would not have been motivated to use the notice of Ballard in the process described in Apfel.

For this additional reason, independent claim 1 is not unpatentable over Apfel in view of Ballard.

Independent claim 18 - According to independent claim 18, a request for the download of a graphical content element of a web page posted by a content provider is automatically initiated, and only the graphical element is received in response to the request without receiving the whole web page. Apfel does not disclose that the upgrades are graphical elements of a web page or that graphical elements of a web page are downloaded without downloading the entire web page.

While it is possible for a web page of Apfel to include a link to an update, there is no disclosure in Apfel that this link is a graphical element or that the

link can be downloaded to the content recipient without downloading the web page in which the link might appear.

Ballard similarly does not disclose downloading only a graphical element of a web page. Ballard merely discloses a process for searching the web for files and does not even mention web pages.

Accordingly, because neither Apfel nor Ballard discloses downloading only a graphical element of a web page, one of ordinary skill in the art would not have combined Apfel and Ballard so as to produce the invention of independent claim 18.

For this reason, independent claim 18 is not unpatentable over Apfel in view of Ballard.

Independent claim 32 - Applicants pointed out in their previous response that Apfel fails to disclose the last limitation of this claim, i.e., electronically receiving the second program code at the content recipient. This second program code according to independent claim 32 is responsible for automatically accessing a content provider and initiating receipt by the content recipient of posted content.

The Examiner replies that Apfel discloses a prompt in column 10, lines 23-33, that the prompt is received by a content recipient, and that the prompt

prompts the content recipient to access the content provider.

Column 10, lines 23-33 of Apfel states that an update dialog box is displayed, that the update dialog box displays an upgrade prompt, and that the user may use the dialog box either select to download the upgrade or select to terminate the upgrade attempt.

As can be seen, neither the dialog box nor the prompt within the dialog box automatically accesses a content provider or automatically initiates receipt by the content recipient of the posted content only if the posted content is new. Therefore, neither the dialog box nor the prompt within the dialog box can be the second program code recited in independent claim 32.

Ballard likewise does not disclose second program code that automatically accesses a content provider or that automatically initiates receipt by the content recipient of the posted content only if the posted content is new.

Because neither Apfel nor Ballard discloses second program code that automatically accesses a content provider or that automatically initiates receipt by the content recipient of the posted content only if the posted content is new, neither Apfel nor Ballard can

disclose the last limitation of independent claim 32, i.e., electronically receiving the second program code at the content recipient.

Accordingly, one of ordinary skill in the art would not have combined Apfel and Ballard so as to produce the invention of independent claim 32.

For this reason, independent claim 32 is not unpatentable over Apfel in view of Ballard.

Independent claim 45 - According to this claim, a request for posted content is automatically initiated by a content recipient and the posted content is automatically downloaded to the content recipient if the posted content is new.

As discussed above in connection with independent claim 1, neither Apfel not Ballard, discloses a content recipient who both automatically initiates a request for posted content and automatically downloads the posted content.

Accordingly, because neither Apfel nor Ballard discloses a content recipient that both automatically initiates a request for posted content and automatically receives that posted content as required by independent claim 45, one of ordinary skill in the art would not have

combined Apfel and Ballard so as to produce the invention of independent claim 45.

For this reason, independent claim 45 is not unpatentable over Apfel in view of Ballard.

Because independent claims 1, 18, and 32 are not unpatentable over Apfel in view of Ballard, dependent claims 2-4, 6-9, 19, 21, 26, 28-31, 33, 34, 40, 41, 43, and 44 are likewise not unpatentable over Apfel in view of Ballard.

In addition, dependent claim 40 recites that fourth program code is executed at the content provider so as to determine whether the content recipient possesses the second program code and, if the content recipient does not possess the second program code, to download the second program code to the content recipient.

However, as discussed above in connection with independent claim 45, neither Apfel nor Ballard discloses or suggests program code that is executed at the content provider so as to determine whether the content recipient possesses the second program code and, if the content recipient does not possess the second program code, to download the second program code to the content recipient.

Accordingly, dependent claim 40 is patentable over Apfel in view of Ballard.

Dependent claim 41 recites that the second program code is electronically received at the content recipient from the content provider.

As can be seen from the above discussion in connection with independent claim 45, dependent claim 41 is patentable over Apfel in view of Ballard.

Dependent claim 43 recites that, upon an action related to the notice, the posted content is displayed to a user.

The Examiner asserts that this feature in disclosed in column 7, lines 1-7 of Ballard.

Column 7, lines 1-7 of Ballard state that a file 76 is presented to the user such as by (i) displaying a message to the user indicating that the download is complete, (ii) displaying the file, (iii) playing the audio work, or (iv) displaying a message that the audio work is available to be played.

Items (ii) and (iii) are not pertinent to dependent claim 43 because if the file itself is displayed or played, there is no need to take an action related to a notice in order to display the posted content to the user.

That leaves items (i) and (iv). However, there is no disclosure in Ballard that the user can display the content by taking an action with respect to the notice.

Accordingly, one of ordinary skill in the art would not have produced the invention of dependent claim 43 from Apfel in view of Ballard. Therefore, dependent claim 43 is not unpatentable over Apfel in view of Ballard.

Dependent claim 44 recites that the content element comprises a note attached to the web page.

The Examiner points to column 2, lines 15-60 of Apfel. However, this portion of the Apfel does not disclose that the update is a note or that the update is attached to a web page.

Accordingly, dependent claim 44 is not unpatentable over Apfel in view of Ballard.

In sections 26-30 of the Office Action, the Examiner rejected claims 12, 13, 15, 16, 20, 22, 24, 25, 28, 36, 37, and 39 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Stephens.

It is noted that the Examiner inadvertently omitted Ballard from this rejection.

Stephens does not make up for the deficiencies of Apfel and Ballard with regard to independent claims 1,

18, 32, and 45. Therefore, independent claims 1, 18, 32, and 45 are patentable over Apfel in view of Ballard and further in view of Stephens. Because independent claims 1, 18, 32, and 45 are patentable over Apfel in view of Ballard and further in view of Stephens, dependent claims 12, 13, 15, 16, 20, 22, 24, 25, 28, 36, 37, and 39 are *per force* patentable over Apfel in view of Ballard and further in view of Stephens.

In section 32 of the Office Action, the Examiner rejected claims 14 and 23 under 35 U.S.C. §103(a) as being unpatentable over Apfel in view of Stephens and further in view of Beyda.

It is noted that the Examiner inadvertently omitted Ballard from this rejection also.

Beyda does not make up for the deficiencies of Apfel, Ballard, and Stephens with regard to independent claims 1, 18, 32, and 45. Therefore, independent claims 1, 18, 32, and 45 are patentable over Apfel in view of Ballard and further in view of Stephens and still further in view of Beyda. Because independent claims 1, 18, 32, and 45 are patentable over Apfel in view of Ballard and further in view of Stephens and still further in view of Beyda, dependent claims 14 and 23 are *per force*

patentable over Apfel in view of Ballard and further in view of Stephens and still further in view of Beyda.

CONCLUSION

In view of the above, it is clear that the claims of the present application patentably distinguish over the art applied by the Examiner. Accordingly, allowance of these claims and issuance of the above captioned patent application are respectfully requested.

Respectfully submitted,

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